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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jean-Pierre Vors

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OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

EXAMINER

ZAREK, PAUL E

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

05/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ADVISORY ACTION

1. Applicants traversed the rejections of Claims 2-5, 7-11, 14-17, and requested Examiner to enter the amendments to the claims. After careful review, Applicants' arguments are not persuasive and the proposed amendments will not be entered.

2. Claims 16, 2-5, 14, and 15 were rejected under 35 U.S.C. 102(b) as being anticipated by Charles, et al. (International Application No. WO 00/46184, already of record). Applicants traversed this rejection on the grounds that Charles, et al., does not anticipate treating *Candida albicans* or *Aspergillus fumigatus* in humans (to which the claim has been amended). Applicants contend that the disclosure of Charles, et al., that generically teaches the compounds, which are identical to those of the instant application, as being effective against Ascomycete spp. would be expected to be effective *C. albicans* or *A. fumigatus*. Examiner respectfully disagrees. Charles, et al., discloses that the compounds disclosed therein would be effective to treat fungal infections of domestic or farm animals. It would be expected that such anti-fungal medication would also be effective for humans because it would be reasonably expected the herein claimed compounds to exhibit the same antifungal activity against the herein claimed pathogens regardless of the host, whether it is human or not. Moreover, Charles, et al., demonstrates that the compounds disclosed therein display broad spectrum anti-fungal activity. Indeed, the compounds disclosed therein are effective against *Erysiphe graminis*, *Pyricularia oryzae*, and *Leptosphaeria nodorum*, all of which belong to the phylum Ascomycota. The amendments to Claim 16 do not overcome this rejection.

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3. Claims 16, 5-11, and 17-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Charles, et al., in view of Bennett (Goodman & Gillman, The Pharmaceutical Basis of Therapeutics, 10th ed., already of record). Applicants traversed this rejection on the grounds that Charles, et al., does not render obvious treating *C. albicans* or *A. fumigatus*. Examiner respectfully disagrees for the reasons discussed above. Applicants also traversed on the grounds that they demonstrate unexpected synergism with fluconazole and itraconazole. Applicants point to Table 6 as proof of the alleged unexpected synergism. Examiner respectfully disagrees. Applicants define the “level of interaction” (L.I.) between fluconazole/itraconazole with the claimed compounds as the ratio of the expected effected concentration to the observed concentration. A L.I. of greater than 1.5 is an indication of synergism, a L.I. of less than 0.5 is an indication of antagonism, and a L.I. between 0.5 and 1.0 is an indication of an additive effect, which would be expected. Of the eight conditions disclosed in Table 6, three conditions demonstrate a synergistic effect, three conditions demonstrate an antagonistic effect, and two demonstrate an additive effect. Such a disclosure is not sufficient to prove drug synergy. The amendments to Claim 16 do not overcome this rejection.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Zarek whose telephone number is (571) 270-5754. The examiner can normally be reached on Monday-Thursday, 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PEZ

/San-ming Hui/
Primary Examiner, Art Unit 1617